

ILLINOIS POLLUTION CONTROL BOARD
October 3, 2002

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 96-143
) (Enforcement - Water, Land)
MICHEL GRAIN COMPANY, INC. d/b/a)
MICHEL FERTILIZER, an Illinois)
corporation, CARLYLE MICHEL, RONNIE)
TODD and RONNIE TODD LAND TRUST,)
)
Respondents.)

ORDER OF THE BOARD (by C.A. Manning):

On August 22, 2002, the Board ordered the People of the State of Illinois (People) to file a third amended complaint in this matter to include the required notice to Michel Grain Company, Carlyle Michel, and Ronnie Todd (respondents) regarding the consequences of failure to answer the complaint. *See* 35 Ill. Adm. Code 103.204(e), (f). On September 20, 2002, the People filed an amended four-count complaint against respondents. *See* 415 ILCS 5/31(c)(1) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002.

Based on alleged contamination from two fertilizer and agrichemical facilities, one in Jefferson County and the other in Hamilton County, the People have pled water pollution and land pollution violations of the Environmental Protection Act (Act) (415 ILCS 5/12(a), (d), 21(d) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002) and Board regulations (35 Ill. Adm. Code 302.203, 304.106, 808.121(c)(1)).

On December 27, 1995, the People filed the original complaint, naming only Michel Grain and Michel as respondents. The complaint alleged water pollution violations of the Act and Board regulations concerning pesticide and fertilizer spills at a grain elevator and liquid agrichemical facility in Ina, Jefferson County. The People's first amended complaint, filed on April 25, 1996, added similar allegations regarding a fertilizer and agrichemical facility located in Broughton, Hamilton County. On October 4, 2001, the People filed a second amended complaint, naming Ronnie Todd (Todd) as an additional respondent and alleging that he was the current owner of the Broughton facility. On July 2, 2002, Todd filed a motion to be dismissed from this proceeding, as the property had been transferred to the Ronnie Todd Land Trust. On August 22, 2002, the Board denied Todd's motion to dismiss. The People's third amended complaint now requests that the Board add the Ronnie Todd Land Trust as a respondent.

The People allege that respondents violated Sections 12, 21, and 22 of the Act. 415 ILCS 5/12, 21, 22 *as amended by* P.A. 92-0574, eff. June 26, 2002. The People further allege that respondents have caused or allowed pesticides, herbicides, fertilizers, and fuels to contaminate

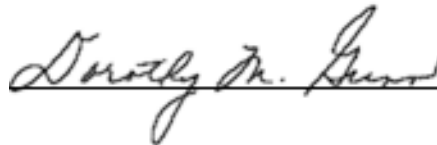
soil since at least January 9, 1992, that respondents have unlawfully disposed of waste, and that contaminants have entered the drainage way causing water pollution.

The Board accepts the complaint for hearing, grants the People's request to add the Ronnie Todd Land Trust as a respondent in this matter, and amends the caption in this order accordingly. A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if respondents fail within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider respondents to have admitted the allegation. 35 Ill. Adm. Code 103.204(d). The Board directs the hearing officer to proceed expeditiously to hearing.

The Board directs the hearing officer to proceed expeditiously to hearing. Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty. Accordingly, the Board further directs the hearing officer to advise the parties that in any summary judgment motions and responses, at hearing, and in briefs, each party must: (1) propose a remedy, including whether to impose a civil penalty, and support its position with facts and arguments addressing the Act's Section 33(c) factors; and (2) propose a civil penalty, if any, including a specific dollar amount, and support its position with facts and arguments addressing the Act's Section 42(h) factors. *See* 415 ILCS 5/33(c), 42(h) (2000).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 3, 2002, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written in black ink. The signature is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board